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7 CENTER FOR ENVIRONMENTAL HEALTH

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 15-794036
13)
14 Plaintiff,) **[PROPOSED] CONSENT**
15 v.) **JUDGMENT AS TO SPARK**
16 TOTALLY WICKED-E LIQUID (USA)) **INDUSTRIES, LLC**
17 INCORPORATED, et al.,)
18 Defendants.)

19
20 **1. INTRODUCTION**

21 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental
22 Health, a non-profit corporation (“CEH”), and Defendant Spark Industries, LLC (“Settling
23 Defendant”) to settle claims asserted by CEH against Settling Defendant as set forth in the
24 operative Complaint (the “Complaint”) in the matter *Center for Environmental Health v. Totally*
25 *Wicked-E Liquid (USA) Incorporated, et al.*, Alameda County Superior Court Case No. RG 15-
26 794036 (the “Action”). CEH and Settling Defendant are referred to collectively as the “Parties.”
27

1 **1.2.** On November 19, 2015, CEH served 60-Day Notices of Violation (the “Notices”)
2 relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986, California
3 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the California
4 Attorney General, the District Attorneys of every County in the State of California, and the City
5 Attorneys for every City in State of California with a population greater than 750,000. The
6 Notices allege violations of Proposition 65 with regard to exposures to formaldehyde and
7 acetaldehyde resulting from use of Settling Defendant’s e-cigarette devices and the e-liquids used
8 in such devices (the “Products”).

9 **1.3.** On November 19, 2015, CEH filed the Action. On February 17, 2016, CEH
10 named Settling Defendant as a defendant in the Action.

11 **1.4.** Settling Defendant is a corporation that employs ten (10) or more persons and that
12 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of
13 California or has done so in the past.

14 **1.5.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
15 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint
16 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)
17 venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this
18 Consent Judgment as a full and final resolution of all claims which were or could have been
19 raised in the Complaint based on the facts alleged in the Notices and Complaint with respect to
20 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

21 **1.6.** The Parties enter into this Consent Judgment as a full and final settlement of all
22 claims which were or could have been raised in the Notices and Complaint arising out of the facts
23 or conduct related to Settling Defendant alleged therein. By execution of this Consent Judgment
24 and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or
25 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
26 an admission by the Parties of any fact, conclusion of law, or violation of law. Settling Defendant
27 denies the material, factual, and legal allegations in the Notices and Complaint, expressly denies
28

1 any wrongdoing whatsoever, and maintains that all of its products comply with all laws and meet
2 all legal requirements for their intended use. Except as specifically provided herein, nothing in
3 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
4 any of the Parties may have in this or any other pending or future legal proceedings. This
5 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
6 solely for purposes of settling, compromising, and resolving issues disputed in this Action.

7 **2. DEFINITIONS**

8 **2.1.** “Covered Products” means “Covered Liquid Products” and “Covered Device
9 Products.”

10 **2.2.** “Covered Liquid Products” means liquids that are designed for use with electronic
11 cigarette devices, also known as tanks and vape pens, that are manufactured, distributed, and/or
12 sold by Settling Defendant in California.

13 **2.3.** “Covered Device Products” means electronic cigarette devices, also known as
14 tanks and vape pens, which contain nicotine or are designed and intended for use with Covered
15 Liquid Products, that are manufactured, distributed, and/or sold by Settling Defendant in
16 California.

17 **2.4.** “Effective Date” means the date on which the Court enters this Consent Judgment.

18 **3. INJUNCTIVE RELIEF**

19 **3.1. Clear and Reasonable Warnings for Covered Liquid Products.** Except as
20 provided in Section 3.1.1 below, as of the Effective Date, no Covered Liquid Product may be
21 manufactured for sale, distributed or sold by Settling Defendant in California unless such
22 Covered Liquid Product has a clear and reasonable warning on the product, its labeling, or its
23 outer packaging. The warning shall state the following:

24 **WARNING:** Use of this product can expose you to chemicals, including
25 formaldehyde and acetaldehyde, known to the State of California to cause
26 cancer, and chemicals, including nicotine, known to the State of California
27 to cause birth defects or other reproductive harm.

1 The warning shall not be preceded by, surrounded by, or include any additional words or phrases
2 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be
3 prominently displayed on the Covered Liquid Product, its labeling, or its packaging with such
4 conspicuousness, as compared with other words, statements, or designs, as to render it likely to be
5 read and understood by an ordinary individual prior to sale. To the extent that other warning
6 statements are included on the outer label or packaging of a Covered Liquid Product, the warning
7 required herein shall be the same size or larger than other warnings and separated from the other
8 warnings by a space that is at least the same height as a line of text on the label. For internet,
9 catalog, or any other sale by Settling Defendant where the consumer is not physically present and
10 cannot see a warning displayed on the Covered Liquid Product or its packaging prior to purchase
11 or payment, the warning statement shall be displayed in such a manner that it is likely to be read
12 and understood as being applicable to the Covered Liquid Product being purchased prior to the
13 authorization of or actual payment. Placement of the warning statement at the bottom of an
14 internet webpage that offers multiple products for sale does not satisfy the requirements of this
15 Section.

16 **3.1.1. Warnings for Covered Liquid Products in the Stream of Commerce.**

17 In an effort to ensure that consumers receive clear and reasonable warnings in compliance with
18 Proposition 65 for Covered Products that have not been labeled in accordance with Section 3.1,
19 within thirty (30) days following the Effective Date, Settling Defendant shall provide warning
20 materials by certified mail to each of its California retailers or distributors whom Settling
21 Defendant reasonably believes still have inventory of Covered Liquid Products that are being
22 offered for sale in California without a Proposition 65 warning. Such warning materials shall
23 include a reasonably sufficient number of stickers in order to permit the retailer or distributor to
24 affix the warning on each Covered Liquid Product such customer has purchased from Settling
25 Defendant and that Settling Defendant reasonably believes remains in inventory for sale in
26 California. The warning stickers shall contain the warning language set forth in Section 3.1
27 above. The warning materials shall also include a letter of instruction for the placement of the
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1 warning stickers. To the extent that Settling Defendant has any of its own inventory that does not
2 contain warnings as of the Effective Date, Settling Defendant shall provide warning materials as
3 described above to any of its customers that it reasonably understands may offer such products for
4 sale in California.

5 **3.2. Clear and Reasonable Warnings for Covered Device Products.** Except as
6 provided in Section 3.2.1 below, as of the Effective Date, no Covered Device Product may be
7 manufactured for sale, distributed or sold in California unless such Covered Device Product has a
8 clear and reasonable warning on the product, its labeling, or its outer packaging. For Covered
9 Device Products, the warning shall state the following:

10 **WARNING:** Use of this product can expose you to chemicals, including
11 formaldehyde and acetaldehyde, known to the State of California to cause
12 cancer, and chemicals, including nicotine, known to the State of California
13 to cause birth defects or other reproductive harm.

14 The warning shall not be preceded by, surrounded by, or include any additional words or phrases
15 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be
16 prominently displayed on the Covered Device Product, its labeling, or its outer packaging with
17 such conspicuousness, as compared with other words, statements, or designs, as to render it likely
18 to be read and understood by an ordinary individual prior to sale. To the extent that other
19 warning statements are included on the Covered Device Product or its outer packaging, the
20 warning required herein shall be the same size or larger than such warning and separated from the
21 other warnings by a space that is at least the same height as a line of text on the label. For
22 internet, catalog, or any other sale by Settling Defendant to California where the consumer is not
23 physically present and cannot see a warning displayed on the Covered Device Product prior to
24 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to
25 be read and understood as being applicable to the Covered Device Product being purchased prior
26 to the authorization of or actual payment. Placement of the warning statement at the bottom of an
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1 internet webpage that offers multiple products for sale does not satisfy the requirements of this
2 Section.

3 **3.2.1. Warnings for Covered Device Products in the Stream of Commerce.**

4 In an effort to ensure that consumers receive clear and reasonable warnings in compliance with
5 Proposition 65 for Covered Products that have not been labeled in accordance with Section 3.2,
6 within thirty (30) days following the Effective Date, Settling Defendant shall provide warning
7 materials by certified mail to each of its California retailers or distributors whom Settling
8 Defendant reasonably believes still have inventory of Covered Device Products that are being
9 offered for sale in California without a Proposition 65 warning. Such warning materials shall
10 include a reasonably sufficient number of stickers in order to permit the retailer or distributor to
11 affix the warning on each Covered Device Product such customer has purchased from Settling
12 Defendant and that Settling Defendant reasonably believes remains in inventory for sale in
13 California.. The warning stickers shall contain the warning language set forth in Section 3.2
14 above. The warning materials shall also include a letter of instruction for the placement of the
15 stickers. To the extent that Settling Defendant has any of its own inventory that does not contain
16 warnings as of the Effective Date, Settling Defendant shall provide warning materials as
17 described above to any of its customers that it reasonably understands may offer such products for
18 sale in California.

19 **3.3. Optional Additional Injunctive Provisions.** In order for Settling Defendant to be
20 eligible for any waiver of the additional civil penalty payments/additional settlement payments set
21 forth in Section 4.1.5 below, Settling Defendant shall undertake one or more of the additional
22 actions below. If Settling Defendant opts to be bound by this Section, Settling Defendant must
23 provide CEH with a written election stating which optional provision(s) it is agreeing to
24 implement within 90 days of the Effective Date.

25 **3.3.1. Product Reformulation.** Within ninety (90) days following the Effective
26 Date, all Covered Products manufactured for sale in California shall be manufactured such that
27 use of the Covered Products will not produce detectable levels of formaldehyde and acetaldehyde
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1 when tested in accordance with the testing protocol described in the published research paper
2 titled Effect of Variable Power Levels on the Yield of Total Aerosol Mass and Formation of
3 Aldehydes in E-Cigarette Aerosols, a copy of which is attached hereto as Exhibit 1. In the event
4 that Settling Defendant certifies its compliance with this Section, Settling Defendant will no
5 longer have any obligation to provide warnings pursuant to Sections 3.1-3.2 of this Consent
6 Judgment. In the event that Settling Defendant provides this certification as to any Covered
7 Product after 90 days after the Effective Date, Settling Defendant shall still be liable for the
8 additional payment specified in Section 4.1.5 below related to this section.

9 **3.3.2. Product Safety Requirements.** If Settling Defendant opts to participate in
10 Section 3.3, Settling Defendant shall make the following changes to the Covered Products to
11 increase the safety of such products:

12 **3.3.2.1.** Within ninety (90) days following the Effective Date, all
13 Covered Liquid Products manufactured for sale in California shall be manufactured with child
14 proof caps in accordance with the standards set forth in 16 C.F.R. § 1700.15(b) and flow
15 restrictions in accordance with the standard set forth in 16 C.F.R. § 1700.15(d).

16 **3.3.2.2.** Within ninety (90) days following the Effective Date, all
17 Covered Products manufactured for sale in California shall be manufactured without diacetyl in
18 the Covered Products.

19 **3.3.3. Prohibition on Sales and Advertising to Minors.** Within ninety (90)
20 days following the Effective Date, if Settling Defendant opts to participate in Section 3.3, Settling
21 Defendant shall not sell Covered Products to persons younger than eighteen (18) years of age in
22 California and shall take reasonable steps to prevent the sale of Covered Products to such persons,
23 including, but not limited to the following measures:

24 **3.3.3.1.** Settling Defendant shall implement one or more systems for
25 checking the age of persons who purchase Covered Products on the Internet in California. The
26 system shall include age verification by requiring and checking an official government
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1 identification card or verifying through a reputable credit agency the age of anyone who
2 purchases Covered Products on the Internet.

3 **3.3.3.2.** Settling Defendant shall not use advertisements that target
4 minors younger than 18 years of age. Specifically, Settling Defendant will not use models or
5 images of people that appear to be minors, cartoons, art, fashion, or music that is intended and
6 designed to appeal to people under the legal smoking age in advertisements or promotional
7 materials that appear in California, including on the Internet. Additionally, Settling Defendant
8 will not: (a) advertise in any media that Settling Defendant understands is directed primarily to
9 readership aged under 18 years; (b) utilize any form of outdoor advertising within 1,000 feet of
10 any California school or playground; (c) advertise using Instagram in a manner intended to appeal
11 to persons under age 18 or that permits purchase by persons under age 18; and (d) sponsor any
12 athletic, musical or other cultural events directed primarily at persons under the age of eighteen
13 (18).

14 **3.3.4. Prohibition on Health and Safety Claims.** Within ninety (90) days
15 following the Effective Date, if Settling Defendant opts to participate in Section 3.3, Settling
16 Defendant shall not make health and/or safety claims unless such claims have been reviewed and
17 approved by the Federal Food and Drug Administration. Examples of prohibited claims without
18 FDA approval include the following:

19 **3.3.4.1.** Settling Defendant shall not advertise Covered Products as
20 smoking-cessation devices. This prohibition includes any claims or testimonials about quitting
21 smoking, or using e-cigarettes as a treatment for tobacco dependence or addiction.

22 **3.3.4.2.** Settling Defendant shall not make any claim that the
23 Covered Products do not expose users to carcinogens or are better or safer than tobacco.

24 **3.3.4.3.** Settling Defendant shall not make any claim that the
25 Covered Products produce no second hand smoke.

1 **4. PAYMENTS**

2 **4.1.** Settling Defendant shall initially pay to CEH the total sum of \$10,000 in resolution
3 of all claims that were or could have been raised in the Notices and Complaint, which shall be
4 allocated as follows:

5 **4.1.1.** \$1,315 as a civil penalty pursuant to California Health & Safety Code §
6 25249.7(b), such money to be apportioned by CEH in accordance with California Health &
7 Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of
8 Environmental Health Hazard Assessment). This civil penalty shall be paid in one (1) check on
9 the date set forth in Exhibit A and shall be made payable to the Center for Environmental Health.

10 **4.1.2.** \$985 as an additional settlement payment (“ASP”) in lieu of civil penalty
11 to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,
12 Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and Youth Fund and use
13 them to: (1) support CEH programs and activities that seek to educate the public about nicotine,
14 formaldehyde, and acetaldehyde in electronic cigarettes and other toxic chemicals in consumer
15 products that are marketed to youth; (2) expand its use of social media to communicate with
16 Californians about the risks of exposures to nicotine, formaldehyde, and acetaldehyde and other
17 toxic chemicals in the products they and their children use and about ways to reduce those
18 exposures; and (3) work with industries that market products to youth to reduce exposures to
19 nicotine, formaldehyde, and acetaldehyde and other toxic chemicals, and thereby reduce the
20 public health impacts and risks of exposures to nicotine, formaldehyde, and acetaldehyde and
21 other toxic chemicals in consumer products that are marketed to youth in California. CEH shall
22 obtain and maintain adequate records to document that ASPs are spent on these activities and
23 CEH agrees to provide such documentation to the Attorney General within thirty (30) days of any
24 request from the Attorney General. This ASP shall be paid in one (1) check on the date set forth
in Exhibit A and shall be made payable to the Center for Environmental Health.

25 **4.1.3.** \$7,700 as a reimbursement of a portion of CEH’s reasonable attorneys’
26 fees and costs.

1 **4.1.4.** The payments required under Sections 4.1.1-4.1.3 shall be delivered on or
2 before the dates set forth in Exhibit A. All checks shall be delivered to Mark Todzo at Lexington
3 Law Group at the address set forth in Section 8.1.2.

4 **4.1.5.** In the event that Settling Defendant elects not to certify its compliance with
5 one or more of the optional provisions in Section 3.3 in accordance with that Section, on the date
6 specified in Exhibit A, Settling Defendant must make an additional payment for each provision
7 not certified, as follows: (i) \$2,000 if Settling Defendant elects to not participate in Section 3.3.1;
8 (ii) \$9,600 if Settling Defendant elects to not participate in Section 3.3.2; (iii) \$9,700 if Settling
9 Defendant elects to not participate in Section 3.3.3; and (iv) \$8,700 if Settling Defendant elects to
10 not participate in Section 3.3.4. Each of these payments shall be paid in two (2) separate checks,
11 each payable to the Center for Environmental Health, to be allocated as follows:

12 **4.1.5.1.** Forty percent (40%) shall constitute a civil penalty pursuant to
13 California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in
14 accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State
15 of California's Office of Environmental Health Hazard Assessment).

16 **4.1.5.2.** Sixty percent (60%) shall constitute an ASP in lieu of civil
17 penalty to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
18 Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's Toxics and Youth
19 Fund and use them to: (1) support CEH programs and activities that seek to educate the public
20 about nicotine, formaldehyde, and acetaldehyde in electronic cigarettes and other toxic chemicals
21 in consumer products that are marketed to youth; (2) expand its use of social media to
22 communicate with Californians about the risks of exposures to nicotine, formaldehyde, and
23 acetaldehyde and other toxic chemicals in the products they and their children use and about ways
24 to reduce those exposures; and (3) work with industries that market products to youth to reduce
25 exposures to nicotine, formaldehyde, and acetaldehyde and other toxic chemicals, and thereby
26 reduce the public health impacts and risks of exposures to nicotine, formaldehyde, and
27 acetaldehyde and other toxic chemicals in consumer products that are marketed to youth in
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1 California. CEH shall obtain and maintain adequate records to document that ASPs are spent on
2 these activities and CEH agrees to provide such documentation to the Attorney General within
3 thirty (30) days of any request from the Attorney General.

4 **5. ENFORCEMENT OF CONSENT JUDGMENT**

5 **5.1.** CEH or Settling Defendant may, by motion or application for an order to show
6 cause before the Superior Court of Alameda County, enforce the terms and conditions contained
7 in this Consent Judgment. Prior to bringing any motion or application to enforce the
8 requirements of Section 3 above, the moving party shall provide the other party with a Notice of
9 Violation and a copy of all test results and/or any other evidence which purportedly supports the
10 Notice of Violation of this Consent Judgment. The Parties shall then meet and confer regarding
11 the basis for the Notice of Violation in an attempt to resolve it informally, including providing the
12 responding party with a reasonable opportunity of at least thirty (30) days to cure any alleged
13 violation and/or present evidence to the moving party as to why there is no violation. Should
14 such attempts at informal resolution fail, the moving party may file its enforcement motion or
15 application. The prevailing party on any motion to enforce this Consent Judgment shall be
16 entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
17 application. This Consent Judgment may only be enforced by the Parties.

18 **6. MODIFICATION OF CONSENT JUDGMENT**

19 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and
20 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

21 **7. CLAIMS COVERED AND RELEASE**

22 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH,
23 acting in the public interest, and Settling Defendant and Settling Defendant's parents, officers,
24 directors, shareholders, divisions, subdivisions, subsidiaries, affiliates, agents, and their respective
25 successors and assigns ("Defendant Releasees"), and all entities to whom they distribute or sell or
26 have distributed or sold Covered Products including, but not limited to, distributors, wholesalers,
27 customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant
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1 Releasees”), of all claims alleged in the Notices and Complaint in this Action arising from any
2 alleged or actual violation of Proposition 65 that has been or could have been asserted in the
3 public interest against Settling Defendant, Defendant Releasees, and Downstream Defendant
4 Releasees, regarding the failure to warn about actual or alleged exposure to formaldehyde and/or
5 acetaldehyde in or from use of the Covered Products manufactured, distributed, or sold by
6 Settling Defendant prior to the Effective Date.

7 **7.2.** CEH, on behalf of itself, and its past and current agents, representatives, attorneys,
8 successors, and/or assignees only, hereby releases, waives, and forever discharges any and all
9 claims against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees
10 arising from any violation of Proposition 65 that has been or could have been asserted in
11 connection with Covered Products manufactured, distributed, or sold by Settling Defendant prior
12 to the Effective Date.

13 **7.3.** Compliance with the terms of this Consent Judgment by Settling Defendant and
14 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling
15 Defendant and Downstream Defendant Releasees with respect to any alleged failure to warn
16 about formaldehyde and/or acetaldehyde exposures from the Covered Products manufactured,
17 distributed, or sold by Settling Defendant after the Effective Date.

18 **8. PROVISION OF NOTICE**

19 **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail as follows:

21 **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to
22 receive notices pursuant to this Consent Judgment shall be:

23 Spencer Thompson
24 Spark Industries, LLC
25 750 Calle Plano
26 Camarillo, CA 93012

26 With Copy to:

27 J. Robert Maxwell
28 Rogers Joseph O’Donnell

1 311 California Street, 10th Floor
2 San Francisco, CA 94104
3 jmaxwell@rjo.com

4 **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to
5 this Consent Judgment shall be:

6 Mark Todzo
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 mtodzo@lexlawgroup.com

11 **8.2.** Any Party may modify the person and address to whom the notice is to be sent by
12 sending the other Parties notice by first class and electronic mail.

13 **9. COURT APPROVAL**

14 **9.1.** This Consent Judgment shall become effective on the Effective Date, provided
15 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
16 Settling Defendant shall reasonably cooperate in supporting approval of such Motion.

17 **9.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or
18 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
19 purpose.

20 **10. GOVERNING LAW AND CONSTRUCTION**

21 **10.1.** The terms and obligations arising from this Consent Judgment shall be construed
22 and enforced in accordance with the laws of the State of California. In the event that Proposition
23 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the
24 provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of
25 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
26 Covered Products, then Settling Defendant shall provide written notice to CEH of any asserted
27 change in the law and the parties will meet and confer in good faith about a proposed
28 modification to this Consent Judgment to account for such change in law.

1 **11. ENTIRE AGREEMENT**

2 **11.1.** This Consent Judgment contains the sole and entire agreement and understanding
3 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all
4 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein.

6 **11.2.** There are no warranties, representations, or other agreements between CEH and
7 Settling Defendant except as expressly set forth herein with respect to the subject matter hereof.
8 No representations, oral or otherwise, express or implied, other than those specifically referred to
9 in this Consent Judgment have been made by any Party hereto with respect to the subject matter
10 hereof.

11 **11.3.** No other agreements not specifically contained or referenced herein, oral or
12 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

13 **11.4.** No supplementation, modification, waiver, or termination of this Consent
14 Judgment shall be binding unless executed in writing by the Party to be bound thereby, or unless
15 ordered by the Court.

16 **11.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
18 such waiver constitute a continuing waiver.

19 **12. RETENTION OF JURISDICTION**

20 **12.1.** This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

22 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

23 **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.
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14. NO EFFECT ON OTHER SETTLEMENTS

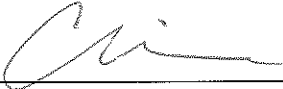
14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

15. EXECUTION IN COUNTERPARTS

15.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or pdf, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

SPARK INDUSTRIES, LLC

Signature

Printed Name

Title

IT IS SO ORDERED:

Dated: _____, 2017

Judge of the Superior Court

1 **14. NO EFFECT ON OTHER SETTLEMENTS**

2 **14.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against another entity on terms that are different from those contained in this Consent Judgment.

4 **15. EXECUTION IN COUNTERPARTS**

5 **15.1.** The stipulations to this Consent Judgment may be executed in counterparts and by
6 means of facsimile or pdf, which taken together shall be deemed to constitute one document.

7

8 **IT IS SO STIPULATED:**

9 **CENTER FOR ENVIRONMENTAL HEALTH**

10

11 _____
12 Charlie Pizarro
13 Associate Director

13

14 **SPARK INDUSTRIES, LLC**

15 
16 _____
17 Signature

18 SPENCER THOMPSON
19 Printed Name

20 MANAGING MEMBER
21 Title

22

23 **IT IS SO ORDERED:**

24

25 Dated: _____, 2017
26 _____
27 Judge of the Superior Court

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